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"CAN I SEE SOME ID?" AGE VERIFICATION REQUIREMENTS FOR THE ONLINE LIQUOR STORE

Boris Reznikov¹

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Abstract

Teenagers are starting to use the Internet to circumvent the ordinarily stringent restrictions on the sale of alcohol to underage individuals. Since states have always punished vendors for furnishing alcohol to minors, companies that choose to sell alcohol online must recognize that they could be criminally and civilly liable if they do not take reasonable precautions to ensure that minors do not obtain their product. This Article examines the steps online alcohol vendors might take in order to protect themselves from liability so that they can continue to run their ventures in a profitable manner.

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INTRODUCTION

<1>State governments, in charge of alcohol regulation since the end of Prohibition, are facing a new challenge in today's technological age with the increase in online alcohol sales. A recent study reveals that more than 500,000 teenagers have bought alcohol online.² In addition, the study indicates that over three million teenagers know a peer who has purchased alcohol through a Web site.³ It quickly becomes evident while browsing the Internet that purchasing alcohol online is not complicated. Established companies such as Safeway, Albertson's, Costco, and Beverages & More! have Web sites that allow consumers to order beer, wine, and distilled alcohol to be delivered right to their doorstep.⁴ There are also many smaller online businesses that provide American consumers, and potentially minors, with alcohol on demand.⁵

<2>While some online liquor stores ("OLSs") pay an extra fee for a shipping company to obtain an adult signature at the delivery site, others do not. Some Web sites even mock state laws by advertising that they will ship orders in "discreet" packages.⁶ Compounding the problem is the fact that some states have recently passed laws to expand the sale of alcohol online, yet they lack the resources to regulate such online ventures.⁷ Since 2002, only a few states have conducted online compliance checks on OLSs.⁸ Each of these inspections revealed that minors were successfully obtaining alcohol online.⁹

<3>The ease with which minors are ordering alcohol online has developed into a serious problem. States have always been concerned with the negative consequences associated with underage drinking. Young adults are three times more likely to be involved in an alcohol-related vehicular accident as compared with other drivers, and twice as likely to be involved in accidents resulting in a fatality.¹⁰ Further, the economic cost of these accidents in the United States has been estimated at nineteen billion dollars annually.¹¹ For these and other reasons, every jurisdiction in the United States has enacted laws to prevent minors from buying or drinking alcohol.¹²

<4>In 2004, three OLSs that allowed minors to order and receive alcohol from their Web sites, without "meaningful" age checks, were fined \$5,000 by the Alcoholic Beverages Control Commission of Massachusetts ("ABCC").¹³ The ABCC also ordered these OLSs to install a mechanism on their Web sites that would automatically reject orders placed from buyers in Massachusetts.¹⁴ Luckily for these OLSs the possibility of civil actions was averted because no injuries to minors or third parties resulted from the sales. Nevertheless, it is likely that states, who have heavily regulated alcohol sales in the past, will want to ensure that they are protecting their citizens by controlling online alcohol sales as well. The question that arises is how far must these OLSs go to verify a customer's age and protect themselves from criminal and civil liability?

<5>This Article first examines the issue by looking at the criminal and civil liability for underage alcohol sales in traditional brick and mortar businesses. The Article then demonstrates how current laws, regulations, and judicial decisions apply to OLSs in order to determine the necessary steps that need to be taken to shield online vendors from liability for potentially providing alcohol to minors. In discussing the matter, this Article highlights the jurisdictional issues concerning online businesses and the different online age verification systems available to OLSs.

CRIMINAL LIABILITY FOR BRICK AND MORTAR LIQUOR STORES

<6>The enactment of the 21st Amendment in 1933 ended Prohibition and gave states the authority to regulate alcohol sales.¹⁵ Consequently, states have developed different alcohol control systems over time.¹⁶ Every jurisdiction prohibits the furnishing of alcohol to minors, although several states make exceptions for various reasons such as medical treatment, religious services, and situations where the minor's parents provide the alcohol.¹⁷ It follows from this that minors are prohibited from buying alcohol, except in Delaware, Indiana, New York, and Vermont, where purchases by a minor only constitute a crime if fraudulent identification ("ID") or false statements are used.¹⁸

<7>Penalties also vary by state. In Washington, furnishing alcohol to a minor is a gross misdemeanor.¹⁹ It is punishable by a fine of up to \$5,000 and the possibility of incarceration for one year.²⁰ In Alabama, the crime is a misdemeanor that entails a fine of \$100 to \$1,000 and the possibility of up to six months of prison for the first offense.²¹ Subsequent offenses are penalized by guaranteed jail time of up to twelve months.²² New Mexico views this offense as a fourth degree felony and sentences violators to eighteen months in prison for the first offense, as well as assessing fines of up to \$5,000.²³ Most states also reserve the right to suspend or revoke the vendor's license to sell alcohol in the event of an offense.²⁴

<8>The defenses available to brick and mortar liquor providers, similarly, differ by state. Jurisdictions have developed two primary models for interpreting their criminal statutes regarding furnishing alcohol to minors: (1) strict liability, and (2) allowing for a good faith defense. Strict liability states hold vendors accountable under all

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circumstances.²⁵ Good faith jurisdictions, on the other hand, excuse the alcohol provider if there was a mistake of age, with states varying on the degree of due diligence they require of the vendor.²⁶ An example of a good faith state is Washington, which allows liquor stores to protect themselves from any liability by having a purchaser present valid ID *and* sign a certification card stating they understand it is against the law for an underage person to purchase alcohol.²⁷

CIVIL LIABILITY FOR BRICK AND MORTAR LIQUOR STORES

<9>At common law, there was no cause of action against vendors arising out of the sale or furnishing of alcohol to minors.²⁸ A supplier of alcohol, thus, was not liable for the injury or death of one's customer or a third party that the customer might injure.²⁹ The courts based this on the theory that individuals were responsible for their own actions, and that drinking the alcohol, not furnishing it, was the proximate cause of injuries.³⁰

<10>Today, however, most states dismiss the common law rule of nonliability and allow injured parties to recover against suppliers.³¹ To do this, the majority of states have passed dram shop acts.³² One of the purposes of these statutes is to deter the sale of alcohol to underage individuals by imposing civil liability on vendors in certain situations where intoxicated minors injure themselves or third parties.³³ States without dram shop acts have allowed plaintiffs to recover under the common law negligence cause of action.³⁴ Some jurisdictions have even permitted actions based on negligence per se when an alcohol beverage control statute is violated.³⁵ Liability under the negligence per se doctrine is easier to prove because the plaintiff's need to establish a duty owed and breached by a vendor is eliminated.³⁶

<11>Unlike the defenses for criminal liability, most states agree that if a vendor makes a good faith effort to verify the age of a customer, then it should not be held civilly liable for the injuries that the minor causes.³⁷ This immunity for due diligence in age verification is either provided by the dram shop act, the alcohol beverage control statute, or is instead created by the court itself.³⁸ Nonetheless, courts have held that vendors are not acting diligently when they fail to require valid ID or by merely asking patrons if they are over the age of twenty-one.³⁹

JURISDICTIONAL ISSUES CONCERNING THE ONLINE LIQUOR STORE

<12>If an OLS is prosecuted or sued for furnishing alcohol to a minor, then its first potential defense can be that the court lacks jurisdiction. This argument, however, will likely be unsuccessful. For criminal matters, courts have jurisdiction over the OLS because the crime was committed in their state.⁴⁰ This is true even if the original act was in another state and only transmitted through a Web site.⁴¹ For civil suits, a court has personal jurisdiction over an OLS through either (1) specific jurisdiction, where the cause of action arises from the company's purposeful contacts with the state, or (2) general jurisdiction, where the cause of action is unrelated to the activities within the forum, but the OLS is either incorporated there, or is found to have "systematic and continuous" activities in that state.⁴²

<13>The emergence of the Internet has brought up many issues regarding personal jurisdiction.⁴³ Nevertheless, it is becoming clear that a Web site that sells goods to a consumer has made purposeful contacts with the particular forum in which the consumer resides, and if the cause of action arises from the sale, then that state has specific jurisdiction over the company running the Web site.⁴⁴ Furthermore, some courts have held that selling items over the Internet to customers from particular states meets the requirements for general jurisdiction as well.⁴⁵ Other courts,

however, reject this broad definition of general jurisdiction and require states to establish that the online company has sufficient minimum contacts with the forum to even consider if there is general jurisdiction.⁴⁶

<14> Although the debate about the proper general jurisdiction analysis for Web sites is intriguing, for OLSs the issue is generally unimportant. Many civil lawsuits filed against OLSs will arise out of the specific sale of alcohol to consumers from that forum state, and consequently the court will be able to exercise specific jurisdiction. OLSs, therefore, should be prepared to answer to courts in the states where they sell alcohol. In addition, OLSs should be aware that doing business in a particular state may create sufficient contacts for that state's courts to establish general jurisdiction, depending upon the test that state employs in its jurisdictional analysis.

LIABILITY FOR THE ONLINE LIQUOR STORE

<15> With respect to criminal liability, OLSs should anticipate that state alcohol regulatory agencies will soon begin monitoring online violations and punishing offenders. OLSs should expect to be held liable if they sell alcohol to a minor in jurisdictions that interpret their alcohol beverage control statutes to be strict liability laws.

<16> The dilemma for OLSs arises in the states where a good faith defense allows vendors to be excused for "accidentally" furnishing alcohol to minors, which is also the standard in the torts field. If an OLS's business model is set up to allow it to take orders from all fifty states on the same Web site, then it will face serious compliance challenges in trying to adhere to each state's standards.⁴⁷ Thus, in order for an OLS to ensure its age verification system is strong enough to preclude liability, it must be of such quality that the most stringent state considers it a good faith effort to prohibit minors from buying alcohol.⁴⁸

<17> Considering this, one court noted that when a business "makes money by serving liquor where teenagers are known to be present...the situation is so fraught with foreseeable risk that a business that is in a position to control or reduce the risk has a duty to do so."⁴⁹ The OLS, therefore, should try to verify age in a diligent manner. The question becomes: what age verification technique should the OLS use to avoid potential liability?

AGE VERIFICATION TECHNIQUES FOR THE ONLINE LIQUOR STORE

<18> Currently, OLSs employ a variety of approaches to prevent their products from being sold to minors. Some companies only offer a warning on their sites that a customer must be the age of majority to order.⁵⁰ These OLSs are likely to have a difficult time convincing courts that the posting of a warning, without anything more, is an exercise of good faith to ensure that minors are not purchasing alcohol. In effect, this would be like a brick and mortar liquor store asking if a customer was of legal age, receiving an affirmative answer, and then proceeding with a sale. The bottom line is that a showing of greater diligence is probably expected, especially from an online retailer that should acutely be aware that minors might be targeting it to avoid the identification checks at their local liquor stores.⁵¹

<19> Although OLSs that warn consumers they cannot be underage still usually require a credit card to purchase alcohol, the use of a credit card does not guarantee the customer is over the age of twenty-one. A 1999 survey found that twenty-eight percent of respondents between the ages of sixteen and twenty-two did in fact have a credit card.⁵² Further, major credit card companies have expressly acknowledged that an individual having access to a credit card does not prove that they are no longer minors.⁵³

<20> Many OLSs, most likely out of concern for potential liability, have begun to employ other age verification techniques. The most common method used by an OLS is to ensure that the alcohol is delivered to an adult. Some stores, such as Safeway, actually deliver groceries and alcohol with their own drivers, who verify that individuals are at least twenty-one years of age.⁵⁴ This type of business model is no different than a Safeway checker asking to see valid ID at the grocery store, and consequently the same liability will likely attach. Most OLSs, however, are not capable of delivering the alcohol themselves because they are not located near the consumer. Instead, these OLSs choose to pay an extra fee to shipping companies such as UPS and FedEx to verify that the recipient is over the age of twenty-one before making the delivery.⁵⁵ Since the goal of an OLS is to be profitable, paying extra shipping costs increases their overall transaction fees and reduces earnings.⁵⁶

<21> An even greater problem than the increased costs of doing business is that liability is still likely to attach to the OLS if a minor obtains alcohol. FedEx's terms and conditions specifically place "the responsibility for ensuring compliance with applicable laws and regulations on the person or company tendering the shipment."⁵⁷ In addition, a prior court decision hints that a vendor can still be held liable for negligently providing alcohol to a minor, even if they are not directly responsible for handing the alcohol to the individual. In *Tobin v. Norwood Country Club, Inc.*, the court imposed liability on a bartender who did not directly serve a minor because she should have foreseen that a minor might obtain the alcohol under the circumstances.⁵⁸ The possibility of minors obtaining liquor online, even with shippers requiring an adult signature, is not far-fetched.⁵⁹ It is possible that a delivery person could fail to obtain the required adult signature, have no experience in being able to differentiate between authentic IDs and fake IDs, or even fail to check ID.⁶⁰ Hence, the OLS could potentially be liable for furnishing alcohol to a minor under the theory that the OLS should have foreseen such an occurrence and exercised a higher degree of care.⁶¹

<22> Since switching the liability to the shipping company does not seem like a viable option for OLSs, another online age verification system should be considered. A service provided by BirthDateVerifier.com is currently being used by companies that operate adult entertainment Web sites.⁶² This newly patented system requires users to create an "electronic affidavit" by giving a sworn statement that they are the age of majority.⁶³ Unlike other "click-here-if-you-are-over-18" Web sites, there are legal consequences for providing false information because of the E-Sign Act and the Unsworn Declarations Act.⁶⁴ Thus, a minor would have to be willing to commit the federal felony of perjury to gain access to the Web site.⁶⁵

<23> Even though BirthDateVerifier is not likely to significantly increase the cost of a transaction, it still is not a viable age verification system for an OLS.⁶⁶ Minors already assume the risk of being found guilty of a crime when they purchase alcohol from traditional brick and mortar liquor stores because it, like furnishing alcohol to a minor, is against the law in all states.⁶⁷ The possibility of being charged with a crime, therefore, does not prevent underage individuals from attempting to purchase alcohol. Further, even though the minor is one of the parties who is breaking the law, the states still impose civil and criminal liability on the liquor store. For this reason, BirthDateVerifier would not bar suits against an OLS because it would be analogous to a minor attempting to purchase alcohol in the traditional manner.

<24> Some companies can provide a service to OLSs that takes a future consumer's name, birth date, phone number, and last four digits of their social security number and verifies this information against public records such as credit bureau databases to check the individual's age.⁶⁸ Although this is a step in the right direction, it is not fool proof. Many minors have access to their parent's social security number and can easily supply this information. To make the system more effective, the OLS would

have to require that the same credit card be used for the purchase. With this condition, the only way a minor could obtain alcohol would be by stealing their parent's credit card. Even though this seems like a good effort by an OLS, it is important to remember that even one mistake in the age verification process could lead to catastrophe. By the time a parent discovers their credit card bill and the unauthorized charge for alcohol on it, a minor could have already become intoxicated and injured themselves or others.

<25> One company has gone a step further and come up with an intriguing solution to the online age verification dilemma. After using the customer's name and address to identify the individual, IDology creates "knowledge based authentication" questions that only that specific individual would know and then it checks the answers against public records.⁶⁹ For instance, the system could instantaneously ask the consumer different questions, such as what car they drove in a certain year and where they lived at that time. It would be more difficult for a minor to answer these questions due to the lack of first hand knowledge, thereby making the process significantly more secure. Most importantly, this online age verifier is affordable for an OLS because the charge per transaction ranges between twenty-five cents and one dollar – offering a dramatically cheaper alternative than verification by the shipper.⁷⁰ IDology has already been approved by Michigan's Liquor Control Commission as a valid provider of age verification services for direct wine shipments and is endorsed by Wine America.⁷¹

<26> In the future, advances in technology could lead to the use of biometrics and digital signatures in effective age verification, but these systems are currently impractical. Biometric identification utilizes biological characteristics or behavioral traits of individuals to verify their identity electronically.⁷² One Israeli company has created an Age Group Recognition ("AGR") device that allows Web sites to ascertain the exact age of a consumer.⁷³ AGR works by users connecting a device, similar to a mouse, to a computer by a USB port.⁷⁴ Through an internet connection, the device uses human finger biometric scanning to determine the age of the individual in real time.⁷⁵ This is a one-time measurement and does not compromise the person's privacy.⁷⁶ Although the technology of biometrics is intriguing, it is unlikely to be practical in the near future for an OLS. Companies selling alcohol online cannot expect that consumers will go through the steps to obtain this product simply to order alcohol on the Internet. Such a process significantly impairs one of the most marketable aspects of an OLS: convenience.

<27> For similar reasons, digital signatures are also not presently useful to the OLS. Digital signatures require an individual to apply a private key, which is usually a number that is unique to the particular transaction and known by only the holder, to validate oneself.⁷⁷ To receive a private key, however, a consumer must first obtain a digital certificate from either a notary, credit agency, or postal clerk.⁷⁸ Since many consumers would be unwilling to deal with this inconvenience just to purchase alcohol online, digital signatures do not currently provide OLSs with a feasible solution to online age verification.

CONCLUSION

<28> Different jurisdictions may reach varied results with regard to whether age verification systems, such as the requirement of an adult signature at delivery or database record checks, would exonerate an OLS found to have furnished alcohol to an underage individual. An OLS, however, should still assume that it faces a significant risk of being found liable for selling alcohol to minors, and that it must find ways to mitigate that risk. Several new age verification technologies are now available, and others are in development, that may provide significant assistance to OLSs in reducing the chances that they will possibly make illegal alcohol sales to minors. While the use of such technologies cannot provide complete protection from

liability under all state laws, failure to use these safeguards increases an OLS's exposure to civil and criminal liability.

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Footnotes

1. Boris Reznikov, University of Washington School of Law, Class of 2008. Thank you to Professor Jane K. Winn, Dan Hadjinian, Arthur F. Licata, and Joanne Moak for their guidance and feedback. This Article does not intend to promote the sale of alcohol over the Internet.
2. Miranda Hitti, *Online Survey: Millions of Teens May Have Bought Alcohol Through the Internet*, WEBMD MEDICAL NEWS, Aug. 2006, <http://www.webmd.com/parenting/news/20060811/teens-buy-alcohol-online>.
3. *Id.*
4. See Safeway, <http://www.safeway.com>; Albertson's, <http://www.albertsons.com>; Costco, <http://www.costco.com>; Beverages & More!, <http://www.bevmo.com> (all sites last visited Oct. 3, 2007).
5. For companies based in the United States, see Internet Wines and Spirits, <http://randalls.stores.yahoo.net/index.html>; QueenAnneWine.com, <http://wine-club.stores.yahoo.net/index.html>; LoveScotch: The Scotch and Spirits Online Superstore, <http://www.lovescotch.com/index.php>; Wally's, <http://www.wallywine.com/default.aspx>. For offshore companies see OnlineLiquor, <http://www.onlineliquor.co.nz/>; Bicton Cellars, <http://www.bictoncellars.com.au/>; Original Absinthe, <http://www.originalabsinthe.com/> (all sites last visited Oct. 3, 2007).
6. Teens Increasingly Ordering Liquor Online: Trend Comes as More States Allowing Sales, But Lack Ability to Police Them, <http://www.msnbc.msn.com/id/14468132/> (last visited Oct. 6, 2006). This article is no longer available on this website, but is on file with the author.
7. *Id.*
8. Millions of Kids Buy Internet Alcohol, Landmark Survey Reveals: Related Audit Confirms States Loosening Internet Alcohol Sales Laws With Little Monitoring or Enforcement Online (Aug. 2006), <http://www.wswa.org/public/media/tru-research/research.html> (last visited Sept. 30, 2007).
9. *Id.*
10. See Angela M. Easley, Note, *Vendor Liability for the Sale of Alcohol to an Underage Person: The Untoward Consequences of Estate of Mullis v. Monroe Oil Co.*, 21 CAMPBELL L. REV. 277, 288 (Spring 1999) (This high percentage meant that in 1997, thirty-seven percent of all traffic fatalities involving fifteen to twenty-year-olds were alcohol-related). See also The Century Council, 2003 Alcohol Related Traffic Fatalities, http://www.fightunderagedrinking.org/downloads/UAD_Alcohol-Related_Traffic_Fatalities.pdf (last visited Sept. 30, 2007) (40% of traffic fatalities for minors involved alcohol).
11. Thomas L. Hafemeister, *Developments in Virginia*, 25 DEV. MENTAL HEALTH L. 112 (July 2006) (taking into account violent crimes and other factors, the overall social cost of underage drinking in the United States is fifty-three billion dollars annually).

12. Easley, *supra* note 10, at 288.
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13. ConsumerAffairs.com, Massachusetts Curbs Online Alcohol Sales, Dec. 22, 2004, http://www.consumeraffairs.com/news04/ma_online_alcohol.html (last visited Sept. 30, 2007).
14. *Id.*
15. U.S. Const. amend. XXI.
16. See U.S. DEPARTMENT OF TRANSPORTATION: NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ALCOHOL BEVERAGE CONTROL ENFORCEMENT: LEGAL RESEARCH REPORT (Apr. 2003), <http://www.nhtsa.dot.gov/people/injury/alcohol/alcbbevcontweb/images/2241legalrfinal.pdf> (last visited Sept. 30, 2007).
17. *Id.*
18. *Id.*
19. The Century Council, State Profiles, http://www.fightunderageddrinking.org/downloads/UDB_State_Profiles.pdf (last visited Sept. 30, 2007).
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. See, e.g., Wash. Rev. Code § 66.20.070 (2006).
25. See, e.g., *City of West Allis v. Megna*, 26 Wis.2d 545, 548 (1965) (finding tavern keeper's good faith defense irrelevant because furnishing alcohol to minors is a strict liability crime); *Funari v. Decatur*, 563 So.2d 54, 55-56 (Ala. 1990) (holding that the purpose of legislation prohibiting the sale of alcohol to minors is to promote and protect the public welfare and therefore requires no intent or knowledge by the criminal); *State v. Koliche*, 143 Me. 281, 284-85 (1948) (holding that furnishing alcohol to minors is malum prohibitum and does not require the prosecution to prove intent); *People v. Gar Bob Corp.*, 266 N.Y.S.2d 771 (1966) (holding that a corporation that sells alcohol to minors does so at its own peril and cannot use ignorance or mistake as a defense); *Hoyle v. Board of Liquor License Com'rs for Baltimore City*, 115 Md.App. 124, 131 (1997) (holding that a server mistaking a minor for a regular customer whom she knew to be of legal drinking age is not a valid defense to the crime of selling alcohol to a minor).
26. See, e.g., *State v. Niesen*, 415 N.W.2d 326, 329 (Minn. 1987) (holding that bartender is not criminally liable because he acted in good faith by asking a nineteen-year-old for ID before selling alcohol to her); *Spitz v. Mun. Court of the City of Phoenix*, 127 Ariz. 405, 408 (1980) (conduct of liquor store employee when checking the age of the purchaser constituted good faith because he followed all of the procedures in the relevant statute); *Rancher Bar & Lounge v. State*, 514 P.2d 634, 635-36 (Wyo. 1973) (vendor is criminally liable because there was no good faith effort to check the validity of the minor's ID).
27. See Wash. Rev. Code §§ 66.20.190; 66.20.210 (2006).
28. Richard Smith, Note, *A Comparative Analysis of Dramshop Liability and a Proposal for Uniform Legislation*, 25 J. CORP. L. 553, 555 (Spring 2000).
29. Easley, *supra* note 10, at 283.

30. See Smith, *supra* note 28, at 555. Age Verification Requirements for the Online Retailer Can Pose Some ID Issues.
31. Easley, *supra* note 10, at 284. Only eight jurisdictions continue to apply the common law rule of non-liability for vendors. These states are: California (*see* Cal. Bus. & Prof. Code § 25602(c) (2006); Cal. Civ. Code § 1714(b) (2006)); Delaware (*see, e.g.,* Samson v. Smith, 560 A.2d 1024 (Del. 1989); Wright v. Moffit, 437 A.2d 554 (Del. 1981)); Kansas (*see, e.g.,* Mills v. City of Overland Park, 251 Kan. 434 (1992); Ling v. Jan's Liquors, 237 Kan. 629 (1985)); Maryland (*see, e.g.,* Wright v. Sue & Charles, Inc., 131 Md.App. 466 (2000)); Missouri (*see* Mo. Rev. Stat. § 537.053(2)); Nebraska (*see, e.g.,* Holmes v. Circo, 196 Neb. 496 (1976)); Nevada (*see, e.g.,* Snyder v. Viani, 885 P.2d 610 (Nev. 1994)); Virginia (*see, e.g.,* Robinson v. Matt Mary Moran, Inc., 259 Va. 412 (2000)).
32. Easley, *supra* note 10, at 285-86.
33. *Id.* (States cited various reasons for the enactment of the dram shop statutes: (1) vendors have the ability to purchase liability insurance to protect themselves from catastrophic losses; (2) vendors can pay for the insurance by increasing prices; (3) vendors can tell whether a consumer is a minor, and (4) it is more just to make vendors pay for the cost of accidents than an innocent and injured third party).
34. Easley, *supra* note 10, at 290.
35. *Id.* at 289.
36. *Id.*
37. Smith, *supra* note 28, at 561. One exception to this rule is the strict liability approach adopted by Illinois that does not provide a good faith defense to vendors. Illinois's dram shop act, however, ameliorates the harshness of this approach by setting a \$55,000 cap on damages. 235 Ill. Comp. Stat. Ann. § 5/6-21 (1999).
38. Smith, *supra* note 28, at 561.
39. *See, e.g.,* Michnik-Zilberman v. Gordon's Liquor, Inc., 390 Mass. 6 (1983) (holding liquor store liable for fatal car crash because it sold alcohol to a minor without asking for ID); Muford, Inc., v. Peterson, 368 So.2d 213 (Miss. 1979) (same); Migliore v. Crown Liquors of Broward, Inc., 448 So.2d 978 (Fla. 1984) (same); Dark Horse II Inc., v. N.Y. State Liquor Auth., 656 N.Y.S.2d 423 (1997) (bar's reliance on ID was not reasonable because minor was two inches shorter and had a different eye color).
40. See Terrence Berg, *www.wildwest.gov: The Impact of the Internet on State Power to Enforce the Law*, 2000 B.Y.U.L. REV. 1305, 1340-50 (2000). An analysis of extraterritorial criminal jurisdiction shows that "states will be successful in prosecuting out-of-state defendants who victimize their populations using the technology of the Internet if they can either (1) show intent to cause detrimental effects with the forum state and actual detrimental effects within the state, or (2) meet the requirements of the relevant criminal jurisdiction statute." Online alcohol sales usually satisfy this second element because most state criminal jurisdiction statutes follow the language of the Model Penal Code and only require that to exercise jurisdiction over a crime occurring partly outside the state, "either an element of the offense or a result of the offense – which is also an element – must occur within the forum state."
41. *Id.*

43. *Id.* at 166-67.
44. See *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997). In *Zippo*, the court established a test to determine when a company avails itself of the personal jurisdiction of a state by establishing three categories for Web sites. Sites that allow consumers to take orders for goods and services, form contracts, or conduct business over the Internet are "interactive" sites and expose the owner to out-of-state jurisdiction. "Passive" sites, on the other hand, do not serve as a basis for jurisdiction in states besides where the site is hosted because they do not allow interaction between the Web site and the user. The third type of Web site falls in between these two above categories. These "partially interactive" Web sites may be subject to out-of-state jurisdiction if the degree of commercial activity on the site is significant enough. See also A "Category-Specific" Legislative Approach to the Internet Personal Jurisdiction Problem in U.S. Law, 117 HARV. L. REV. 1617, 1618-19 (March 2004) (discussing how courts are starting to use *Calder v. Jones*, 465 U.S. 783 (1984), for internet jurisdictional analysis. The *Calder* "effects test" requires a company to do something more than maintaining a Web site to be under a state's specific jurisdiction, but proof that sales were made to a specific forum would usually be sufficient).
45. See *Mieczkowski v. Masco Corp.*, 997 F.Supp.782, 788 (E.D. Tex. 1998) (holding that a North Carolina furniture manufacturer was subject to general jurisdiction in Texas due to its interactive Web site and other forum contacts. The Web site allowed customers to view furniture online, make purchases, communicate with the online sales staff, and view previous orders).
46. See *Coastal Video Commc'n Corp. v. Staywell Corp.*, 59 F.Supp.2d 562, 571-72 (E.D. Va. 1999). The *Coastal* court found that the mere existence of an interactive Web site without proof that there is "continuous and systematic" contact between the forum state and the site is not enough to establish general jurisdiction. The court further explained that the best indicator of the nature and extent of a company's contacts with a state would be the amount of sales done through the interactive Web site. As the record did not contain this information, the *Coastal* court remanded the case to determine the amount of sales made through the website. See also *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 513 (D.C. Cir. 2002) (Ameritrade's interactive Web site could be sufficient to establish general jurisdiction, depending on the "frequency and volume" of the Web site's business within the forum); *Snyder v. Dolphin Encounters Ltd.*, 235 F.Supp.2d 433 (E.D. Penn. 2002) (key inquiries in a general jurisdiction analysis for a Web site is whether the business conducted on the site "is central to the defendant's business" in the forum state and whether the site specifically targeted the forum state).
47. Even OLSs that try to block sales to specific jurisdictions cannot be certain to succeed. For a discussion of strategies for "jurisdiction avoidance," see MICHAEL GEIST, GLOBAL INTERNET JURISDICTION: THE ABA/ICC SURVEY, (Apr. 2004), <http://www.abanet.org/buslaw/newsletter/0023/materials/js.pdf> (last visited Sept. 30, 2007).
48. See Smith, *supra* note 38.
49. *Tobin v. Norwood Country Club, Inc.*, 422 Mass. 126, 135, (1996).

50. See Absinthe Original, <http://www.originalabsinthe.com/>; EAbsinthe.com,

<http://www.eabsinthe.com/>; The Specialist Wine Merchants, <http://www.eabsinthe.com/>; Reznik, "Can I See Some ID?", <http://www.eabsinthe.com/>; Age Verification Requirements for the Online <http://www.eabsinthe.com/> (all sites last visited Oct. 3, 2007).

51. See Tobin, *supra* note 49.
52. Amit Asaravala, Why Online Age Checks Don't Work, Wired Magazine Online, Oct. 10, 2002, <http://www.wired.com/news/politics/0,1283,55338,00.html>.
53. See Letter from J. Blair Richardson to the Federal Trade Commission regarding the Children's Online Privacy Protection Rule – Comment P994504 (Nov. 30, 2001), <http://www.ftc.gov/privacy/coppa2/comments/aristotle.pdf> (last visited Sept. 30, 2007). Credit card companies have started spending more on advertising to specifically market their cards to minors. Visa and American Express have actually released cards exclusively for minors in order for them "to build financial responsibility when they shop online and in stores." Further, minors can acquire credit card gift cards, such as the VISA gift card, that are accepted by vendors just like regular credit cards. The ease with which minors can obtain these credit card gift cards shows that online vendors who simply require the use of a credit card for their age verification cannot even be remotely certain that an underage individual is not making the alcohol purchase. See Visa Prepaid and Gift Cards, http://usa.visa.com/personal/cards/prepaid/visa_gift_card.html (last visited Oct. 3, 2007).
54. See Safeway, <http://www.safeway.com> (last visited Oct. 3, 2007).
55. See Beverages and More, <http://www.bevmo.com>; Albertson's, <http://www.albertsons.com>; Internet Wines and Spirits, <http://randalls.stores.yahoo.net/index.html>; QueenAnneWine.com, <http://wine-club.stores.yahoo.net/index.html>; LoveScotch: The Scotch and Spirits Online Superstore, <http://www.lovescotch.com/index.php>; Wally's, <http://www.wallywine.com/default.aspx> (all sites last visited Oct. 3, 2007).
56. The advertised price that UPS and FedEx charge for shipments requiring an adult signature is \$3.25. This amount could be lower for the OLS because of frequent shipping, but it still diminishes its competitive advantage over the traditional brick and mortar liquor store because the shipping cost is passed onto the consumer. See UPS Pricing for Value Added Services, http://www.ups.com/content/us/en/shipping/time/service/value_added/index.html; FedEx, <http://www.fedex.com/us/wine/requirements.html> (all sites last visited Oct. 3, 2007).
57. Tina Caputo, *Online Age Verification Technology Challenges Shipping Opponents*, Wines and Vines, Sept. 2005, http://www.findarticles.com/p/articles/mi_m3488/is_9_86/ai_n15636464 (last visited Sept. 30, 2007).
58. See Tobin, *supra* note 49. In *Tobin*, a country club was hosting a family gathering and providing alcohol through a company bartender. The bartender, aware that there were many minors at the club, made sure to ask for ID from anyone she suspected to not be of legal age. She, however, allowed people to purchase multiple alcoholic drinks. One individual purchased numerous drinks and deposited them at a table of minors. Tragically, one of these minors became intoxicated and after leaving the party was run over and killed by a car. After the jury found the minor to be 40 percent comparatively negligent, her family collected slightly over \$500,000 for her death from the country club's insurer.

59. Some states have banned online tobacco sales because of the ease with which minors were obtaining the products. One of the reasons for the ban was the distrust of shippers to actually verify the recipient is over the age of eighteen, the main age verification tool used by online tobacco sellers. See Millions of Kids Buy Internet Alcohol, Landmark Survey Reveals, *supra* note 8 (Wine & Spirits Wholesalers of America CEO Juanita Duggins wonders, "If we don't trust rushed FedEx and UPS drivers to card kids for cigarette shipments, why on Earth should anyone trust them to card kids for vodka and merlot shipments?").
60. It is not difficult for teenagers to obtain or make fake IDs. Numerous Web sites offer these services if minors are not able to acquire the ID themselves. See, e.g., The ID Shop, <http://www.theidshop.com/> (last visited Oct. 3, 2007).
61. Further, it is imaginable that shippers might discontinue age verification service because they do not want to deal with the potential liability attached to delivering alcohol to minors. If this occurs, then federal law preempts states from forcing shippers to provide such a service. The Federal Aviation Administration Authorization Act provides that no state may "enact or enforce a law, regulation, or other provision having the force and effect of a law related to a price, route, or service of an air carrier...when such carrier is transporting property by aircraft or by motor vehicle." 49 U.S.C. § 41713(b)(4)(A) (2006).
62. For Web sites that are currently using the product see List of Sites Using the BirthDateVerifier, <http://www.birthdateverifier.com/sites.html> (last visited Oct. 3, 2007).
63. See BirthDateVerifier Product Information, <http://www.birthdateverifier.com/details.html> (last visited Oct. 3, 2007).
64. See 15 U.S.C. § 7001 (2007); 28 U.S.C. § 1746 (2007).
65. See BirthDateVerifier Product Information, <http://www.birthdateverifier.com/details.html> (last visited Oct. 3, 2007).
66. *Id.* Although the price for this system is not specifically stated on the Web site, since an OLS will not actually receive a product for its purchase, but rather a license to use the idea, the price is not expected to be high.
67. See U.S. DEPARTMENT OF TRANSPORTATION: NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ALCOHOL BEVERAGE CONTROL ENFORCEMENT: LEGAL RESEARCH REPORT, *supra* note 16.
68. See Electracash, http://www.electracash.com/products/echeck_age_ver.aspx (last visited Oct. 3, 2007); Aristotle, http://integrity.aristotle.com/index.php_option=com_content&task=view&id=22&Itemid=46 (last visited Oct. 3, 2007).
69. See IDology Inc., <http://www.idology.com/identity.html> (last visited Oct. 3, 2007); <http://www.idology.com/press10.html> (last visited Oct. 3, 2007).
70. Caputo, *supra* note 57.
71. See IDology Inc., *supra* note 69.
72. See VeriSign letter to the Commission on Online Child Protection, <http://www.verisign.com/repository/pubs/copa/> (last visited Oct. 3, 2007).
73. See i-Mature, <http://www.netcaucus.org/books/childsafety2006/i-mature.pdf> (last visited Oct. 3, 2007).

74. *Id.*

Reznikov: "Can I See Some ID?" Age Verification Requirements for the Online

75. *Id.*

76. *Id.*

77. See VeriSign letter to the Commission on Online Child Protection, *supra* note 72.

78. *Id.*